

EXHIBIT A

00153

1 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2
CIVIL ACTION NO.

3 BOARHEAD FARM AGREEMENT 02-CV-3830
GROUP, Judge Legrome D. Davis

4 Plaintiff, ORAL DEPOSITION OF:

5 vs. MANFRED DeREWAL, JR.
6 (VOLUME II)

ADVANCED ENVIRONMENTAL TECHNOLOGY
7 CORPORATION; ASHLAND CHEMICAL
COMPANY; BOARHEAD CORPORATION;
8 CARPENTER TECHNOLOGY CORPORATION;
CROWN METRO, INC.; DIAZ CHEMICAL
9 CORPORATION; EMHART INDUSTRIES,
INC.; ETCHED CIRCUITS, INC.; FCG,
10 INC.; GLOBE DISPOSAL COMPANY, INC.;
GLOBE-WASTECH, INC.; HANDY & HARMAN
11 TUBE COMPANY, INC.; KNOLL, INC.;
MERIT METAL PRODUCTS CORPORATION;
12 NOVARTIS CORPORATION; NRM INVESTMENT
COMPANY; PLYMOUTH TUBE COMPANY;
13 QUIKLINE DESIGN AND MANUFACTURING
COMPANY; RAHNS SPECIALTY METALS,
14 INC.; ROHM & HAAS COMPANY, SIMON
WRECKING COMPANY, INC.; TECHALLOY
15 COMPANY, INC.; THOMAS & BETTS
CORPORATION; UNISYS CORPORATION;
16 UNITED STATES OF AMERICA
DEPARTMENT OF NAVY,

17
Defendants.

18

19 * * * * *

Tuesday, May 13, 2003

20 * * * * *

Transcript in the above matter taken at
21 the offices of Ballard, Spahr, Andrews & Ingersoll,
LLP, 1735 Market Street, 42nd Floor, Philadelphia,
22 Pennsylvania, commencing at 10:00 a.m.

23 Certified Shorthand Reporting Services
Arranged Through
24 Mastroianni & Formaroli, Inc.
709 White Horse Pike
25 Audubon, New Jersey 08106
(856) 546-1100

00367

1 MS. QUINN: That's all the questions I

2 have. Thank you very much.

3 (EXAMINATION OF MR. DeREWAL BY MR. SHEEHAN:)

4 Q. Mr, DeRewal, can you hear me?

5 A. Yes, I can.

6 Q. Good. This is John Sheehan, I'm an attorney

7 at the Department of Justice in Washington and I

8 represent the United States Navy in this litigation.

9 I've got a couple of questions for you.

10 If you can't hear me, let me know and I'll

11 try to speak up. Earlier today you were asked some

12 questions about a deposition you gave to EPA, do you

13 recall that?

14 A. Yes, I do.

15 Q. Okay. And I believe you stated that you

16 recall giving a deposition in Fort Washington at the

17 Holiday Inn; is that right?

18 A. Well, that's the same one, that's the same

19 one that I gave to the EPA, right.

20 Q. I think this morning you said that your

21 recollection was that it was in '94 or '95, and the

22 copy of the deposition that I have has a date of

23 February 26, 1997. Is it possible that that could have

24 been the date?

25 A. Yes, yeah. What time in '97?

00368

1 Q. '97, February, February 26.

2 A. Yeah, that's correct.

3 Q. And do you recall answering questions from

4 Sarah Keating at EPA?

5 A. Yeah, that's correct.

6 Q. I just wanted to go over a couple of
7 questions and answers that you gave at that deposition
8 with regard to the Navy and see if you recall the
9 testimony.

10 You were asked by Ms. Keating, the question
11 was: "Do you remember DeRewal Chemical Company ever
12 doing business with the Naval facility?" Your answer
13 was: "I believe they did. I don't know if I actually
14 went there or not, what exactly they had."

15 MR. HARRIS: Page number please, John?

16 MR. SHEEHAN: That is Page Number 89,
17 towards the top.

18 BY MR. SHEEHAN:

19 Q. Do you recall giving that testimony,
20 Mr. DeRewal?

21 A. No, I do not. I mean, if that's what it
22 says, that's what I said.

23 Q. Do you have any doubt that that was your
24 response to the testimony?

25 A. I believe so.

00369

1 Q. Okay. Was that your best recollection at
2 the time you gave it?

3 A. Might not have been my best.

4 Q. Why do you say that?

5 A. Pardon?

6 Q. Why was it maybe not your best?

7 A. Well, because that whole testimony wasn't my
8 best.

9 Q. And why do you say that?

10 A. Well, for several reasons. One, certain
11 people, the situation that they were in.

12 Q. And could you describe that for me?

13 A. Well, it was more or less not getting
14 involved -- I didn't really want to get that far
15 involved at that time. I had other problems myself,
16 and most of that testimony isn't true to the facts.

17 Q. Who were the certain people that you were
18 referring to?

19 A. Well, my father is one. And the chemical
20 companies.

21 Q. The DeRewal Chemical Company?

22 A. And the other companies that we had picked
23 up off of.

24 Q. So is your testimony here today that you
25 didn't give truthful testimony at that time; is that

00385

1 A. Pottstown, it was only like 25 minutes, 30
2 minutes down the road.

3 Q. And did you take National's waste to places
4 other than that one --

5 MR. HARRIS: Objection.

6 MR. FACKENTHAL: -- during this period of
7 time in the gap?

8 THE WITNESS: I never have.

9 BY MR. FACKENTHAL:

10 Q. Did you hear about other drivers taking
11 National's waste to places other than Boarhead during
12 the gap?

13 MR. HARRIS: Objection, calls for
14 speculation.

15 THE WITNESS: I can't recall because it
16 was still Marvin Jonas's. Unless he had a spot, I
17 can't recall.

18 BY MR. FACKENTHAL:

19 Q. How can you rule out that none of it went to
20 Sewell?

21 A. I can't rule it out, but I know that myself
22 I never drove it down to Marvin's transfer station.

23 Q. Okay. We saw yesterday that the Ontario
24 Street was shut down in June of 1975. I'm trying to
25 get some time better fixed.

00386

1 A. I can't recall the time when it was shut
2 down.

3 Q. In your deposition before the EPA you said
4 that -- and I'll show you the page if you like -- you
5 said that you stopped working for DeRewal for about six
6 months, and that you started back with your father's
7 company the day or the day after your brother was hurt.
8 Is that correct?

9 A. It could have been roughly in that time
10 period. I don't know if it was six months, I don't
11 think it was that long.

12 Q. Something less than six months?

13 A. I would say yes.

14 Q. But your brother returned to work before
15 you?

16 A. Yes, I believe.

17 Q. And he was then working obviously at the
18 time of that spill?

19 A. Correct.

20 Q. But you hadn't returned to work at that
21 time?

22 A. I can't recall if I did or not -- no, I
23 believe I did because I was there the night of the
24 spill.

25 Q. So it was just about the time you started

00387

1 back to work?

2 A. Or before that time, yes.

3 Q. So if it were six months, that would have
4 made it, what, March of 1976, thereabouts that you went
5 to work for the scrap yard?

6 MR. HARRIS: Objection.

7 THE WITNESS: No, I think it was before
8 that.

9 BY MR. FACKENTHAL:

10 Q. Before March?

11 A. Well, before '76 I believe.

12 Q. So then you worked more than six months for
13 the scrap yard?

14 MR. HARRIS: Objection.

15 THE WITNESS: No, I was only there for
16 six months. I believe it was before.

17 BY MR. FACKENTHAL:

18 Q. Oh, you returned to work before that?

19 A. Before the spill, yes.

20 Q. How much before the spill?

21 A. I don't recall.

22 Q. So it was sometime earlier than March that
23 you left? If the spill was in September --

24 A. I think it was only like three months or
25 four months that we had left.

EXHIBIT B

00401

1 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2

3 CIVIL ACTION NO.
BOARHEAD FARM AGREEMENT 02-CV-3830
4 GROUP, Judge Legrome D. Davis
Plaintiff, Oral Deposition of

5

vs. MANFRED T. DE REWAL, SR.
6 ADVANCED ENVIRONMENTAL TECHNOLOGY
CORPORATION; ASHLAND CHEMICAL
7 COMPANY; BOARHEAD CORPORATION;
CARPENTER TECHNOLOGY CORPORATION;
8 CROWN METRO, INC.; DIAZ CHEMICAL
CORPORATION; EMHART INDUSTRIES,
9 INC.; ETCHED CIRCUITS, INC.; FCG,
INC.; GLOBE DISPOSAL COMPANY, INC.;
10 GLOBE-WASTECH, INC.; HANDY & HARMAN
TUBE COMPANY, INC.; KNOLL, INC.;
11 MERIT METAL PRODUCTS CORPORATION;
NOVARTIS CORPORATION; NRM INVESTMENT
12 COMPANY; PLYMOUTH TUBE COMPANY;
QUIKLINE DESIGN AND MANUFACTURING
13 COMPANY; RAHNS SPECIALTY METALS,
INC.; ROHM & HAAS COMPANY, SIMON
14 WRECKING COMPANY, INC.; TECHALLOY
COMPANY, INC.; THOMAS & BETTS
15 CORPORATION; UNISYS CORPORATION;
UNITED STATES OF AMERICA
16 DEPARTMENT OF NAVY,
Defendants.

17

18 * * * * *
Friday, May 9, 2003
19 * * * * *

20 Transcript in the above matter taken at
the offices of Ballard, Spahr, Andrews & Ingersoll,
21 LLP, 1735 Market Street, 42nd Floor, Philadelphia,
Pennsylvania, commencing at 10 o'clock A.M.

22

Certified Shorthand Reporting Services
23 Arranged Through
Mastroianni & Formaroli, Inc.
24 709 White Horse Pike
Audubon, New Jersey 08106
25 (856) 546-1100

00473

1 before, right. I'm sorry, before.

2 Q. Okay.

3 A. I think my EPA testimony is 1988 or '89.

4 Q. That's correct.

5 A. Okay. So then I saw Minthorn before

6 that.

7 Q. Now, I have your EPA testimony, Mr.

8 DeRewal, but let's see if I can do it without pulling

9 it out.

10 Do you recall testifying to the EPA in

11 1989 that all of Ashland's nitrating acids were

12 disposed of at your Philadelphia facility in

13 Wissinoming?

14 A. If that's what I said, I don't really

15 recall what I said, but if you recall that's what I

16 said, that's probably what I said then.

17 Q. I'll tell you what, I don't want to base

18 it on my recollection. Let's pull it out and look at

19 it.

20 MR. HARRIS: Could we take a

21 five-minute break?

22 (Brief recess.)

23 (Exhibit D-10, Partial Transcript

24 of Deposition dated March 15, 1989,

25 marked for I.D.)

00474

1 Q. Mr. DeRewal, what I placed in front of
2 you I'll represent to you has been marked as D-10.
3 It's an excerpt from the deposition that you took
4 with the EPA on Wednesday March 15th, of 1989. I'm
5 going to ask you a few questions about that, but
6 before I do, I want to direct your attention to the
7 first page of that excerpt, Page 146 beginning at
8 Line 20. The lines are marked down the left-hand
9 column of the page, through 147 Line 9 and have you
10 read that to yourself, and after you've had an
11 opportunity to read it, let me know.

12 A. Yes, I've read it.

13 Q. Mr. DeRewal, I think the easiest thing
14 to do is I'm going to read this testimony into the
15 record, and I want you to follow along, okay?
16 Beginning to Page 146 Line 20, "Question: You
17 mentioned you did some business with Ashland
18 Chemical? Answer: Yes.

19 "Question: Do you know which location
20 that was? Answer: It is in New Jersey. I do not
21 recall the name of the town. It's a small town in
22 New Jersey. It is Great Meadows, I believe,
23 something like that.

24 "Question: Did your truck drivers go
25 up to the Ashland plant or facility to pick up waste?

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1 Answer: Yes.

2 "Question: And what kind of wastes

3 were they? Answer: Sulfuric acid.

4 "Question: Sulfuric acid. And where

5 did your drivers take them to? Answer:

6 Philadelphia."

7 Did I read that correctly, sir?

8 A. Yes.

9 Q. Was that your testimony in 1989

10 regarding the disposal of Ashland waste?

11 A. I guess so. I can't remember if it is

12 or not, but if you tell me this is a copy of what you

13 received, I say yes.

14 Q. Do you have any reason to believe that

15 this is not an accurate transcription of your

16 testimony?

17 A. No, I've got no reason to believe.

18 Q. You were lying when you gave this

19 testimony; is that correct?

20 A. I was lying? Wait, what did we say so

21 far that is not true and what you just read?

22 Q. Yes.

23 A. What did we say that's not true?

24 Q. Okay.

25 A. You said did we do business with

EXHIBIT C

Date Transcribed February 12, 1993

JAY M. CRAWFORD was interviewed in the offices of Handy & Harmon Tube Company, Inc., Township Line and Whitehall Road, Norristown, PA 19403. The following descriptive information was obtained:

Home Address: [REDACTED]
 Home Telephone: [REDACTED]
 Date of Birth: [REDACTED]
 SSAN: [REDACTED]
 Employer: Handy & Harmon Tube Company, Inc.
 Norristown, PA
 Supervisor of Welding and Raw Materials

JOHN C. BULLOCK, Esquire, Environmental Counsel for Handy & Harmon, Waterbury, CT, was present for the interview. Mr. Grabill identified himself by displaying his credentials and advised Mr. CRAWFORD that the interview concerned his knowledge of the type and extent of a possible relationship between Handy & Harmon Tube Company, Inc. and the Bearhead Farms Site during the period from 1969 to 1977. Mr. CRAWFORD was also advised that the investigation had been authorized by the U. S. Environmental Protection Agency (EPA), Region III, Philadelphia, PA, and that his participation was voluntary. Mr. Grabill informed Mr. CRAWFORD that no information protected by attorney/client privilege would be sought. Mr. CRAWFORD agreed to be interviewed and stated that he would be willing to review this statement and, after reviewing it for accuracy, sign the statement. He then provided the following information:

Mr. CRAWFORD stated that he has been the Supervisor of Welding and Raw Material for twenty-five years including the period from 1969 to 1977. He stated that he is not now involved in waste disposal and was not involved during the pertinent period. He felt that ROBERT ZINERMAN, Engineering, and WALT POSEN, Maintenance Supervisor, may have had knowledge of waste disposal; but both are now deceased.

Mr. CRAWFORD stated that the name DeReval Chemical Company was familiar to him since a company with the name DeReval hauled spent lubricants in 30 and 55-gallon drums. He did not recall what types of lubricants were involved, but he did recall seeing other employees fill the drums. The accumulation of drums prior to pick-up was small, probably fewer than a dozen. Mr. CRAWFORD did not recall the frequency of pick-ups or the period of time that DeReval hauled out the drums, but he did remember that it was sometime during the period 1969 to 1977.

Mr. CRAWFORD stated that he had no knowledge of other wastes being hauled by DeReval and, in fact, was not familiar with the waste streams generated by the manufacturing process.

Mr. CRAWFORD advised that he had no contact with any of the drivers or

In view of Jay M. Crawford On 2/5/93 JHA File # 90-150
 ed by Richard C. Grabill Client File # CDH Work Asgmt. # C03052

Date Transcribed February 13, 1993

ORIGINAL
(Red)

MARY A. KOLLMAR was interviewed in the offices of Handy & Harmon Tube Company, Inc., Township Line and Whitehall Road, Norristown, PA 19403. The following descriptive information was obtained:

Home Address:	Preferred contact at place of business
Home Telephone:	Preferred contact at place of business
Date of Birth:	[REDACTED]
SSAN:	[REDACTED]
Employer:	Handy & Harmon Tube Company, Inc. Norristown, PA Purchasing Manager

JOHN C. BULLOCK, Esquire, Environmental Counsel, Handy & Harmon, Waterbury, CT, was present for the interview. Mr. Grabill identified himself by displaying his credentials and advised Ms. KOLLMAR that the interview concerned her knowledge of the type and extent of a possible relationship between Handy & Harmon Tube Company, Inc. and the Boarhead Farms Site during the period 1969 to 1977. Ms. KOLLMAR was also advised that the investigation had been authorized by the U. S. Environmental Protection Agency (EPA), Region III, Philadelphia, PA, and that her participation was voluntary. She was informed that no information protected by attorney/client privilege would be solicited. Ms. KOLLMAR agreed to be interviewed and stated that she would be willing to review this statement and, after reviewing it for accuracy, sign the statement. She then provided the following information:

Ms. KOLLMAR stated that she started working for Handy & Harmon Tube Company, Inc. in 1972 as a clerk/typist in the Purchasing Department. Her duties primarily involved typing and filing purchase orders. She recalled typing purchase orders for Waste Conversion Systems to haul out waste, but she did not recall the type of waste involved.

Ms. KOLLMAR stated that she recalled the name DeReval, possibly in connection with the pick-up of wastes for disposal. She thought that she had typed a debit memo to the file for DeReval Chemical Company services. She did not recall ever having typed any purchase orders for DeReval Chemical Company, and she did not recognize DeReval Chemical Company invoice number 571, dated 2/5/73, issued to Handy & Harmon Tube Company. Ms. KOLLMAR stated that this invoice would have been received by the Accounting Department and would not have been handled by her. The Purchasing Agent at the time would have made contact with the outside hauler, and she would not have had any contact with the office of DeReval Chemical Company. She stated that NORM WILLIAMS was a Purchasing Agent from 1973 to 1980, but he is now deceased. BOB ZIMMERMAN was the Plant Manager during the pertinent period, but he is also deceased. Ms. KOLLMAR could not remember any other employees, former or current, who may have been involved in waste disposal. In addition, there are no records available to research since the Purchasing

Interview of Mary A. Kollmar On 2/5/93 JHA File # 90-150
by Richard C. Grabill Client File # CDM Work Asgmt. # C03052

Department maintained records for only three years during the pertinent period. ORIGINAL

Ms. KOLLMAR stated that during the pertinent period, "TCE" and lubricating (2nd) oils were collected in 55-gallon drums and were hauled away by an outside vendor. She did not recall the volume of waste or who may have hauled it out for disposal.

Ms. KOLLMAR stated that she recognized the name MANFRED DEREWAL, probably as the result of hearing the name in the office and because it is an unusual name. She recalled having seen the name Revere Chemical Company in an old rolodex which was disposed of many years ago. She did not know what the connection between Revere Chemical Company and Handy & Harmon Tube Company was.

Ms. KOLLMAR did not recognize the names Echo, Inc.; Revere Chemical Transport; KAREN BEAN; or any of the other names set forth on page 3, paragraph 3 of the 104(e) letter from the EPA dated September 30, 1992 as having any connection with Handy & Harmon Tube Company, Inc.

Ms. KOLLMAR could provide no further information of value, and the interview was terminated.

STATEMENT OF MARY A. KOLLMAR:

I, Mary A. Kollmar, have read the above statement; and it is true and accurate to the best of my recollection. I have voluntarily signed this page and have initialed all corrections and each of the above pages to attest to the accuracy of this statement. No threats or promises have been made to me, and no coercion of any kind has been used to make me sign this statement.

Date: _____ Signature: _____

Boarhead Farms Site
Kollmar, Mary A.
Page 2

Date Transcribed February 12, 1993ORIGINAL
(Red)

THOMAS H. CURRAN was interviewed at his office at Handy & Harmon Tube Company, Inc., Township Line and Whitehall Road, Norristown, PA 19403. The following descriptive information was obtained:

Home Address: [REDACTED]
 Home Telephone: [REDACTED]
 Date of Birth: [REDACTED]
 SSAN: [REDACTED]
 Employer: Handy & Harmon Tube Company, Inc.,
 Norristown, PA
 Vice President - Manufacturing

JOHN C. BULLOCK, Esquire, Environmental Counsel, Handy & Harmon, Waterbury, CT, was present for the interview. Mr. Grabill identified himself by displaying his credentials and advised Mr. Curran that the interview concerned his knowledge of the type and extent of a possible relationship between Handy & Harmon Tube Company, Inc. and the Bearhead Farms Site during the period from 1969 to 1977. Mr. CURRAN was also advised that the investigation had been authorized by the U. S. Environmental Protection Agency (EPA), Region III, Philadelphia, PA and that his participation was voluntary. Mr. Grabill informed Mr. CURRAN that no information protected by attorney/client privilege would be sought. Mr. CURRAN agreed to be interviewed and stated that he would be willing to review this statement and, after reviewing it for accuracy, sign the statement.

Prior to the start of the interview, Mr. BULLOCK advised that Handy & Harmon Tube Company, Inc. is a separate corporation and that the parent company is Handy & Harmon, Waterbury, CT. Mr. CURRAN then provided the following information:

Mr. CURRAN stated that he has been employed by Handy & Harmon Tube Company, Inc. for twenty-eight years and that he is currently the Vice President of Manufacturing. During the pertinent period, 1969 to 1977, he was an Assistant in the Production Control Office. As such, he was not responsible for waste disposal. During this period, the Maintenance Department may have been responsible for placing liquid wastes in containers for disposal. The Maintenance Department would have contacted Purchasing to have them contact a hauler. BOB ZIMMERMAN was Maintenance Manager during part of the pertinent period, but he is now deceased. ROBERT BECKER was a Purchasing Agent, possibly in 1972 or 1973, but he is no longer employed by Handy & Harmon, and his location is not known. MARY KOLLMAR is currently Purchasing Manager. She began in the Purchasing Department in 1972 or 1973.

Mr. CURRAN stated that Handy & Harmon Tube Company manufactures stainless steel tubes of various diameters and lengths. Some of the tubing is very small and is used for instrumentation. The raw material is placed in acid baths for a

Interview of Thomas H. Curran On 2/3/93 JHA File # 90-150
 by Richard C. Grabill Client File # CDH Work Asgmt. # C03052

ORIGINAL

pickling process which reduces the size. The steel rods are then drawn through a die and over a mandrel in a cold drawing process to further reduce the size. Mr. CURRAN said that the pickling baths use hydrofluoric acid, hydrochloric acid, sulfuric acid, and nitric acid mixed with water. The acid content ranges from 8% to 18%. Ordinarily the acids are not mixed and are separate baths. Spent acids are taken out by tankers. The hauler, currently and during the pertinent period, is Waste Conversion Systems whose headquarters are in Hatfield, PA. Mr. CURRAN could not estimate the volume of spent acid generated and hauled out from 1969 to 1977.

Mr. CURRAN stated that the product was cleaned with a trichloroethylene bath and annealed in a hydrogen atmosphere. No finish coating was applied. The trichloroethylene was redistilled in-house which generated a sludge. The sludge was placed in 55-gallon drums. During the pertinent period, it may have been hauled out by Delaware Container or Chemcene. To the best of Mr. CURRAN's memory, Chemcene hauled out some of the sludge for recycling at no charge to Handy & Harmon.

Mr. CURRAN recalled the name DeReval but could not associate the name with hauling out sludge or other wastes. He did not recognize DeReval Chemical Company, invoice number 571, dated 2/5/73, issued to Handy & Harmon Tube Company.

Mr. CURRAN stated that 10W30 and other oils were used in their vacuum furnaces and became a waste stream. This was recycled by outside vendors whom he did not recall. He stated that the volume was not very large.

Mr. CURRAN said that another waste stream was generated by the use of animal fats based, oil based, and rubber based lubricating oils. This waste was collected in 55-gallon drums and picked up by a hauler whom he did not recall.

Mr. CURRAN stated that the finishing operation includes a grinding process lubricated by water which creates a mix of metal particles and water. This mixture must be disposed of, but it is not a hazardous material. Mr. CURRAN advised that the manufacturing process does not generate any copper wastes.

Mr. CURRAN stated that while the name DeReval was familiar to him, he did not recognize the names DeReval Chemical Company; Revere Chemical Transport; Revere Chemical Company; Echo, Inc.; HANFRED DEREWAL; NORBERT DEREWAL; JONATHAN DUNN; KAREN BEAN; or any of the other names set forth on page 3, paragraph 3 of the 104(e) letter from the EPA dated September 30, 1992.

Mr. Curran could provide no further information of value, and the interview was terminated.

STATEMENT OF THOMAS H. CURRAN:

I, Thomas H. Curran, have read the above statement; and it is true and accurate to the best of my recollection. I have voluntarily signed this page and have initialed all corrections and each of the above pages to attest to the accuracy of this statement. No threats or promises have been made to me, and no coercion of any kind has been used to make me sign this statement.

Date: _____ Signature: _____

Boarhead Farms Site
Curran, Thomas H.
Page 2

Date Transcribed February 12, 1993

JAY M. CRAWFORD was interviewed in the offices of Handy & Harmon Tube Company, Inc., Township Line and Whitehall Road, Norristown, PA 19403. The following descriptive information was obtained:

Home Address: [REDACTED]
 Home Telephone: [REDACTED]
 Date of Birth: [REDACTED]
 SSAN: [REDACTED]
 Employer: Handy & Harmon Tube Company, Inc.
 Norristown, PA
 Supervisor of Welding and Raw Materials

JOHN C. BULLOCK, Esquire, Environmental Counsel for Handy & Harmon, Waterbury, CT, was present for the interview. Mr. Grabill identified himself by displaying his credentials and advised Mr. CRAWFORD that the interview concerned his knowledge of the type and extent of a possible relationship between Handy & Harmon Tube Company, Inc. and the Boardhead Farms Site during the period from 1969 to 1977. Mr. CRAWFORD was also advised that the investigation had been authorized by the U. S. Environmental Protection Agency (EPA), Region III, Philadelphia, PA, and that his participation was voluntary. Mr. Grabill informed Mr. CRAWFORD that no information protected by attorney/client privilege would be sought. Mr. CRAWFORD agreed to be interviewed and stated that he would be willing to review this statement and, after reviewing it for accuracy, sign the statement. He then provided the following information:

Mr. CRAWFORD stated that he has been the Supervisor of Welding and Raw Material for twenty-five years including the period from 1969 to 1977. He stated that he is not now involved in waste disposal and was not involved during the pertinent period. He felt that ROBERT ZINNERMAN, Engineering, and WALT POSEN, Maintenance Supervisor, may have had knowledge of waste disposal; but both are now deceased.

Mr. CRAWFORD stated that the name DeReval Chemical Company was familiar to him since a company with the name DeReval hauled spent lubricants in 30 and 55-gallon drums. He did not recall what types of lubricants were involved, but he did recall seeing other employees fill the drums. The accumulation of drums prior to pick-up was small, probably fewer than a dozen. Mr. CRAWFORD did not recall the frequency of pick-ups or the period of time that DeReval hauled out the drums, but he did remember that it was sometime during the period 1969 to 1977.

Mr. CRAWFORD stated that he had no knowledge of other wastes being hauled by DeReval and, in fact, was not familiar with the waste streams generated by the manufacturing process.

Mr. CRAWFORD advised that he had no contact with any of the drivers or

In view of Jay M. Crawford On 2/3/93 JHA File # 90-150
 ed by Richard C. Grabill Client File # CDH Work Asgmt. # C03052

Employees of DeKaul. He did not recognize the names HANFRED DEREWAL; NORBERT DEREWAL; JONATHAN DUNN; KAREN BEAN; Revere Chemical Company; Revere Chemical Transport; Echo, Inc.; or any of the other names set forth on page 3, paragraph 5 of the EPA 104(e) letter dated September 30, 1992.

Mr. CRAWFORD he could not think of any other employees who would have been familiar with waste disposal during the pertinent period. He could provide no further information of value, and the interview was terminated.

STATEMENT OF JAY H. CRAWFORD:

I, Jay H. Crawford, have read the above statement; and it is true and accurate to the best of my recollection. I have voluntarily signed this page and have initialed all corrections and each of the above pages to attest to the accuracy of this statement. No threats or promises have been made to me, and no coercion of any kind has been used to make me sign this statement.

Date: _____ Signature: _____

Coarhead Farms Site
Crawford, Jay H.
Page 2

EXHIBIT D

Westlaw.

54 Fed.Appx. 31
 54 Fed.Appx. 31, 2002 WL 31492370 (C.A.3 (Pa.))
 (Cite as: 54 Fed.Appx. 31, 2002 WL 31492370 (C.A.3 (Pa.)))

Page 1

H

Nigroni v. Trump Plaza Associates
 C.A.3 (Pa.),2002.

This case was not selected for publication in the Federal Reporter. NOT PRECEDENTIAL Please use FIND to look at the applicable circuit court rule before citing this opinion. Third Circuit Local Appellate Rule 28.3(a) and Internal Operating Procedure 5.3. (FIND CTA3 Rule 28.0 and CTA3 IOP APP I 5.3.)

United States Court of Appeals, Third Circuit.
 Louis NIGRONI; Mary Nigroni; Joseph F. Lombardo,
 v.

TRUMP PLAZA ASSOCIATES, d/b/a Trump Plaza Hotel and Casino; Millar Elevator Service Company, Millar Elevator Service Company, Appellant.
No. 01-3639.

Submitted Under Third Circuit LAR 34.1(a) Oct. 31, 2002.

Decided Nov. 8, 2002.

In action to recover for injuries sustained when escalator malfunctioned, the United States District Court for the Eastern District of Pennsylvania, Stewart Dalzell, J., entered judgment on jury verdict in favor of plaintiffs and denied defendants' motion for new trial. Defendants appealed. The Court of Appeals, Nygaard, Circuit Judge, held that: (1) employee's statements regarding mechanical aspects of escalator constituted admissions by party-opponent; (2) evidence regarding breakdown of adjacent escalator after inspection was admissible; and (3) instruction explaining effects of industry standard was permissible.

Affirmed.

West Headnotes

[1] Evidence 157 ⚡241(1)

157 Evidence

157VII Admissions

157VII(D) By Agents or Other Representatives

157k240 Agents or Employees

157k241 In General

157k241(1) k. In General. Most

Cited Cases

Employee's statements regarding mechanical aspects of escalator at time of inspection and immediately after accident constituted admissions by party-opponent in action by injured person against employer to recover for injuries sustained when escalator malfunctioned, where employee was employed as mechanic, and was present for state inspection of escalators, and immediately after accident in question. Fed.Rules Evid.Rule 801(d)(2)(D), 28 U.S.C.A.

[2] Negligence 272 ⚡1635**272 Negligence**

272XVIII Actions

272XVIII(C) Evidence

272XVIII(C)4 Admissibility

272k1635 k. Similar Facts and Transactions; Other Accidents. Most Cited Cases

Evidence regarding breakdown of adjacent escalator after state inspection was admissible in action against service company to recover for injuries sustained when escalator malfunctioned to demonstrate that mere fact that escalator passed state inspection less than one month before accident did not foreclose possibility of malfunction at time of accident, where escalators were located in same escalator bank, were subject to same preventive maintenance, and both passed inspection shortly before accident.

[3] Negligence 272 ⚡1736**272 Negligence**

272XVIII Actions

272XVIII(E) Instructions

272k1733 Premises Liability

272k1736 k. Buildings and Other

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Structures. Most Cited Cases

Instruction explaining effects of industry standard was permissible in action against service company to recover for injuries sustained when escalator malfunctioned, even though no uniform industry standard was established, where both parties elicited testimony from expert witnesses as to proper standards for escalator maintenance and repair, and instruction did not create presumption that any particular expert's testimony about standard was determinative.

*31 On Appeal from the United States District Court for the Eastern District of Pennsylvania. (D.C. Civil No. 00-cv-03317). District Judge: The Honorable Stewart Dalzell.

Before NYGAARD and WEIS, Circuit *32 Judges and IRENAS,^{FN*} District Judge.

FN* Honorable Joseph E. Irenas, Senior District Judge for the United States District Court for the District of New Jersey, sitting by designation.

OPINION OF THE COURT

NYGAARD, Circuit Judge.

**1 Appellant Millar Elevator Service Company appeals the District Court's order denying Millar's motion for a new trial pursuant to FED R. CIV. P. 59. Specifically, Millar alleges that the District Court erred by: (1) allowing references to certain hearsay testimony; (2) permitting the introduction of evidence concerning escalators adjacent to the one involved in the claim; (3) instructing the jury as to industry standards when no standards were put into evidence, and; (4) finding that the inappropriate statements made by Plaintiff's counsel during closing remarks did not influence the jury's verdict. The facts of this case are well known to the parties and only those relevant to our disposition are cited herein. We will affirm.

Millar first argues that the District Court erred by

permitting the introduction of hearsay testimony when it allowed Nigroni's counsel to make references to the deposition of Len Cannon, an employee of Millar. With regard to the motion for new trial, the District Court found that the references to Len Cannon's deposition were not employed for the truth of Cannon's statements, but rather to form hypothetical questions to witnesses. Further, the District Court found that the jury was instructed that questions by counsel were not evidence to be considered, and that the use of the testimony did not in any way affect Millar's substantive rights.

[1] Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." FED R. EVID. 801(c). The rule further explains that a statement is not hearsay if it is offered against a party and is "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." FED.R.EVID. 801(d)(2)(D). As Millar's brief explains, "[a]t the time of the accident Len Cannon was an hourly employee of Millar." App. Br. at 10. Mr. Cannon was employed as a mechanic and was present for the state inspection of the escalators, as well as immediately after the accident in question. His statements concerning the mechanical aspects of the escalator at the time of the inspection and immediately after the accident were thus made during, and in the context of, his employment for Millar. Because Mr. Cannon's statements do not qualify as hearsay, but rather as admissions by a party-opponent, they may be properly admitted against Millar.

[2] Next, Millar contends that the introduction of evidence regarding the breakdown of an adjacent escalator after a state inspection was inappropriate. We disagree. Escalator 16 was located in the same escalator bank as escalator 17-the escalator in question-and was subject to the same preventive maintenance. Further, both escalators passed state inspection shortly before Mr. Nigroni's accident. As

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the District Court explained, such "testimony was naturally relevant to demonstrate that the mere fact that escalator 17 passed a state inspection less than a month before the accident did not foreclose a malfunction at the time of Nigroni's accident." Order of August 23, 2001. Given that the maintenance of the escalators was in issue, and that evidence concerning the state inspection of the escalators was entered, the District Court did not abuse its discretion by permitting evidence as to the post-inspection condition of escalator 16.

***33 **2** [3] In instructing the jury, the District Court explained the effects of an industry standard on their deliberations. We have reviewed both the instruction and Millar's objections to it and find such an instruction was permissible. Both parties elicited testimony from expert witnesses as to the proper standards for escalator maintenance and repair, although no uniform industry standard was established. The District Court instructed the jury that "[c]ompliance with an industry standard is not necessarily conclusive as to the issue of negligence, and does not, of itself, absolve the defendant from liability." The instruction provided by the District Court simply informed the jury of how it should consider the standards discussed by the experts under New Jersey law, but did not create a presumption that any particular expert's testimony about a standard was determinative. Such an instruction was not prejudicial to either party and was permissible.

Millar also alleges that the remarks made by Nigroni's counsel during the closing arguments were inappropriate and improperly influenced the jury. The District Court considered this argument in deciding Millar's motion for new trial and found that the remarks, although inappropriate, did not influence the jury. When the motion for new trial relates to counsel misconduct, we will defer to the trial court's assessment of the level of prejudice involved. The District Court was in a better position to judge the effects of the remarks by Nigroni's counsel. Looking at the record, we cannot say that

the District Court abused its discretion by finding that the remarks did not improperly influence the jury.

We will affirm.

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